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EXAMINER

SORKIN, DAVID L

ART UNIT PAPER NUMBER

1723

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/713,045 | Applicant(s) ALBRIGHT, CHRISTOPHER | |
| | Examiner David L. Sorkin | Art Unit 1723 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2006.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 20-32 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☒ Claim(s) 4, 12, 18 and 23 is/are allowed.
 6) ☒ Claim(s) 1-3, 5-9, 13-17, 20, 22 and 25-32 is/are rejected.
 7) ☒ Claim(s) 10, 11, 21 and 24 is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 15-17, 20, 22, 27 and 30-32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Regarding independent claim 15, the new negative limitation "exposed without obstruction to the wall around an entire circumference of the upper end" is not described in the original filing. Regarding independent claim 32, there is no description of "tops of each of the first and second sides being nearer to the top part of the auger than tops of each of the third and fourth sides, bottoms of each of the first, second, third and fourth sides being the same distance from the bottom part of the auger" in the original filing. Oppositely, as seen in Figs. 5A1 and 5B1, the bottom of the container is oblong.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 5-9, 13, 14, 25, 26, 28 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 985 342. Regarding claims 1, EP '342 discloses a mixing apparatus for mixing livestock feed, said apparatus comprising a container (1) for the

reception of feed; said container including a floor (6), a wall extending away from the floor, such that substantially all of said wall is disposed above the floor, said wall defining a top opening remote from the floor, said floor and said wall defining an enclosure (see Fig. 1); a discharge opening (51) in said wall; and an auger (2,3) disposed within said enclosure, said auger having an axis of rotation extending substantially vertically through the floor, said wall further including a first side (right side in Fig. 1) and a second side (left side in Fig. 1) positioned on opposing sides of the enclosure, said sides being disposed at dissimilar angles to said floor (see Fig. 1).

Claims 1 and 28 discuss an intended direction of travel during an intended use; however, "the manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself" *In re Casey*, 152 USPQ 235 (CCPA 1967) and "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

Regarding claim 2, said first side is substantially vertical relative to the floor (see Fig. 1).

Regarding claim 3, said first side and said second side are not symmetrical (see Fig. 1).

Regarding claims 5 and 6, an absolute value of a difference between the angles of the first and second sides comprise a range of 15 to 25 degrees (see Fig. 1). Regarding claim 7, EP '342 discloses a mixing apparatus for mixing livestock feed, said apparatus comprising a container (1) for the reception of feed; said container including a floor (6), a wall extending away from the floor, the arrangement being such that substantially all of said wall is disposed above the floor, said wall defining a top opening remote from the

Art Unit: 1723

floor, said floor and said wall defining an enclosure (see Fig. 1); a discharge opening (51) in said wall; and an auger (2,3) disposed within said enclosure, said auger having an axis of rotation extending substantially vertically through the floor, said wall further including a first end (the right side in Fig. 2) and second end (the left side in Fig. 2) positioned on opposing sides of the enclosure, said wall further including a first side (right side in Fig. 1) and a second side (left side in Fig. 1) positioned on opposing sides of the enclosure, a first angle between said second side and said axis being greater than a second angle between said first side and said axis (see Fig. 1). Claim 7 and 29 discuss an intended direction of travel during an intended use; however, "the manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself" *In re Casey*, 152 USPQ 235 (CCPA 1967) and "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). Regarding claim 8, said first side is disposed substantially vertical relative to the floor (see Fig. 1). Regarding claim 9, said first side and said second side are not symmetrical (see Fig. 1).

Regarding claims 13 and 14, an absolute value of a difference between the angles of the first and second sides comprise a range of 15 to 25 degrees (see Fig. 1).

Regarding claims 25 and 26, the first side is vertical (see Fig. 1).

5. Claims 15, 16, 22, 27 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Wosmek (US 2,894,733). Regarding claim 15, Wosmek ('733) discloses a mixing apparatus for mixing livestock feed, said apparatus comprising a container (12)

Art Unit: 1723

for the reception of feed; said container including a floor (16), a wall extending away from the floor, the arrangement being such that substantially all of said wall is disposed above the floor, said wall defining a top opening remote from the floor, said floor and said wall defining an enclosure (see Figs. 1 and 2); an auger (23), including an upper end exposed without obstruction to the wall around an entire circumference of the upper end, and a lower end, disposed within said enclosure, said auger having an axis of rotation extending substantially vertically through the floor, said wall further including a first side (right side in Fig. 2) and a second side (left side in Fig. 2) positioned on opposing sides of the enclosure, said first said and said second side are disposed parallel to a direction of travel of the mixing apparatus (see Figs. 1 and 2), a distance between said axis of rotation and an upper part of said first side wall being shorter than the distance between said axis of rotation and an upper part of said second side of said wall. Regarding claims 16 and 27, said first side is disposed substantially vertical relative to said floor (see Figs. 1 and 2). Regarding claim 22, a discharge opening is located in the second side (see Fig. 2). Regarding claim 30, said first said and said second side are disposed parallel to a direction of travel (see Figs. 1 and 2).

Allowable Subject Matter

6. Claims 4, 12, 18 and 23 are allowed.
7. Claims 10, 11, 21 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant has removed the previously added new matter from claim 15, but replaced it with other new matter. No support for the negative limitation "an upper end exposed without obstruction..." is found. The absent of a disclosure of an obstruction is not sufficient support of the negative limitation. Regarding claim 32, the bottom of the container is shown as oblong in the drawings. There is no support for four equidistant sides. Even in Figs. 6A1-6D1, the bottom of the container has an oblong shape with a major axis about 15 percent larger than the minor axis.

9. While the specification describes wheels and a hitch, claim 1 and 7 do not require these elements. The discussion in these claims of a direction that the container is intended to be pulled in an intended operation is not a positive recitation of an structure other than the container.

10. While Wosmek (US 2,894,733) does disclose a sleeve (26) surrounding an upper portion of the auger, the reference discloses both the presence and absence of the sleeve stating at col. 2 lines 9-10, "Preferable and as shown, the upper end of the vertical conveyor 23 is housed with an elongated sleeve". One of ordinary skill in the art would understand this as a disclosure of embodiments of the invention with and without the sleeve being present, with the sleeve being present preferable.

Conclusion

11. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 1723

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1723

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


David L. Sorkin
Primary Examiner
Art Unit 1723

DLS